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IN THE

Supreme Court of the United States

October Term, 1967

No. 1095

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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New York, N. Y. 10007

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Pursuant to Rule 58, this Petition for rehearing seeks rehearing of the March 18, 1968 denial of certiorari.

There is an intervening circumstance since filing the original petition which should be of controlling effect.

The adverse opinion of the Court of Appeals for the Second Circuit herein is based only on a letter dated February 9, 1967, from James J. McFaun, Secretary-Treasurer of the Independent Watchmen's Association, written at the direction of petitioner, the president of the I. W. A. to the members of its Local 2.

As appears by reference to the crucial letter itself (Exhibit 1 to Amended Complaint, 13a Appellants' Appendix, Court of Appeals) one of the matters petitioner wished aired at the Local meeting was the proposed change of welfare insurers, to which the International objected, from the Equitable Life Assurance Society to Hamilton Life Insurance Company.

Since the petition was filed herein, reports in the press (*New York Times,* Monday, March 4, 1968 and *The Wall Street Journal,* Monday March 4, 1968) indicate Hamilton Life Insurance Company appears to have become insolvent and proceedings for its liquidation have been instituted by New York State authorities.

For the convenience of the Court, photoprint copies of these two reports are bound in on the opposite page.

(Opposite) ☛

COURT TEST FACED BY HAMILTON LIFE

State Seeks to Take Over Ailing Insurance Company

By ROBERT D. HERSHEY Jr.

The Hamilton Life Insurance Company of New York was directed over the weekend to show cause in the State Supreme Court at Foley Square this morning why the Superintendent of Insurance should not take it over.

The insurance concern, founded in 1959, has been under study by the Insurance Department since a capital impairment was found in a special examination Nov. 22. Papers filed by Superintendent Richard E. Stewart on Friday showed Hamilton to be insolvent.

Policyholders are protected in full under the insurance law, which provides that all policies and annuity contracts written by Hamilton wolud be guaranteed by the Life Insurance Guaranty Corporation, "100 cents on the dollar," Mr. Stewart said.

Hamilton was enjoined Friday from writing any new insurance business. It will be required to show reasons why the injunction should not be made permanent.

Deficit Reported

A special report of Insurance Department examiners indicates that Hamilton's current liabilities exceed its assets by at least $800,000. According to the company's 1967 annual statement, it had a deficit of about $600,000.

A committee was assigned Feb. 7 to make a study of Hamilton operations and to report within 30 days.

"The new information contained in the Hamilton statement and the Insurance Department Examiners' report indicates a substantial deterioration in the financial condition of Hamilton since the date of the Department report presented to the Guaranty Corporation," the Insurance Department said.

It was understood that Albert Barnet became chairman of Hamilton on Thursday, replacing Harold B. Pomeranz. Efforts to reach either man for comment yesterday were unsuccessful.

Hamilton's shares, traded over the counter, closed Friday at 2 bid, 2½ asked. On Nov. 21, the price was 5¼ bid, 6 asked.

Hamilton Life Faces Seizure by New York, Which Calls Firm Insolvent; Officer Quits

By EDWARD P. FOLDESSY
Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—The New York State Insurance Department took court action Friday against troubled Hamilton Life Insurance Co. of New York.

The department obtained an order in a state court directing Hamilton to show cause today why it shouldn't be taken over by the insurance department. The order also temporarily enjoined Hamilton from writing any new insurance, and required the company to show cause why the injunction shouldn't be made permanent.

According to the court papers a special report by the department's examiners, dated this past Friday, showed Hamilton to be insolvent. It indicated that the insurer's current liabilities exceeded assets by "at least $800,000," based on 1967 results with certain adjustments made to March 1.

The department claimed the new information contained in the Hamilton statement and the special study indicated a "substantial deterioration" in the insurer's financial condition and that "immediate action" was necessary.

Chairman Quits

In other developments, it was learned that Harold B. Pomeranz, who was elected chairman of Hamilton last month, resigned Thursday. Albert Barnett, who was chosen as president and chief executive officer last month, was named to temporarily succeed Mr. Pomeranz.

Reached at home yesterday, Mr. Barnett declined comment on Mr. Pomeranz's resignation and refused to discuss the court action.

If the insurance department does receive permission to seize Hamilton it may take steps, at the direction of the court, to rehabilitate the insurer. Should such efforts prove futile, however, the department could apply to the court for Hamilton's liquidation.

The department's special study was conducted by the state Life Insurance Guaranty Corp. The Guaranty Corp. study was commissioned Feb. 7, after a special department examination, dated Nov. 22, showed Hamilton's surplus had fallen below prescribed legal limits.

Under New York law, the Guaranty Corp., which consists of New York legal life insurers, guarantees in full the payment of life insurance policies and other insurance obligations of insurers in the state.

The Guaranty Corp. study, it was indicated, would continue in order to develop further information that "may prove of assistance in the rehabilitation proceedings or in any other proceedings which may follow."

But whatever action is taken, the department stressed "all Hamilton policyholders and beneficiaries are fully protected (by the Guaranty Corp.), 100 cents on the dollar."

Hamilton's own 1967 report wasn't immediately available to the press. The Nov. 22 report of the department was at variance with the company's own figures. The department's examination showed that, as of May 31, Hamilton's liabilities exceeded assets by $674,047.22. At the time, Hamilton's own statement claimed its assets exceeded liabilities by $281,598.42. It was indicated the company has since made adjustments to correct most of the variances. According to the court papers, Hamilton's 1967 report showed liabilities exceeded assets by about $600,000.

An official of Hamilton has estimated that the company has about $415 million insurance in force, made up of $190 million of ordinary and $225 million of group insurance.

This may, at first blush, seem like a narrow factual matter not sufficient to sway the opinoin of this Court as to whether or not this case is of sufficient importance to justify the granting of *certiorari*. Reflection however, indicates that this bald fact is of the utmost importance.

As stated in the original petition herein:

> "The Court of Appeals holding is 'that the LMRDA secures the right of union members to meet without interference from the international union except where the parent organization acts in accordance with lawfully established procedures to institute a trusteeship over the local union.' This holding characterized by the Court of Appeals as 'an important question under the Labor Management Reporting and Disclosure Act', creates a situation where a parent body is prohibited from acting toward its locals except in the most drastic manner. Persuasion and orderly discussion are apparently outlawed if exercised by a parent union. On the other hand the parent is encouraged to take action to prevent almost completely the exercise of almost any local autonomy."

If the International Union chose to impose a trusteeship under its constitution on the ground that placement of union welfare funds with an insurer likely to become insolvent was in prospect, the Court of Appeals holding would not be an obstacle to such trusteeship. When however, the International was reasonably, as recent events have shown, apprehensive of contemplated conduct involving changing the vitally needed welfare insurance funds from a great mutual insurer of international reputation to a company whose solvency was in doubt, and wished to discuss this question in a free and

open meeting, not presided over by the local officials who were possibly pushing such a change for interests of their own, the International's action is branded as a violation of the members' rights.

In a word, the Court of Appeals would permit a Trusteeship and complete loss of local autonomy, but would not permit reasoned discussion, without coercion, of the problems which would justify such trusteeship when such discussion would prevent the necessity of trusteeship.

The LMRDA gives rights to union members—basic rights including rights to express any views, arguments, or opinions [29 U.S.C. 411 (a) (1)]. Should not International officials have the same right to express their opinions in letters openly distributed and subject to refutation in open meeting, presided over by International officers, with no interest in stifling discussion, but only interest in a free expression of the members views?

If the individual member of the union is to have the right of free speech on union affairs should not international officers interested in the Local's welfare, have the same right of free speech?

Dated: April 8, 1968

Respectfully submitted,

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Certificate of Counsel

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58 of the Rules of this Court.

Dated: April 8, 1968.

WILFRED L. DAVIS